

Agreement re: Integrity Commissioner

Dated: February 14, 2019

Between:

The Corporation of the Town of Essex

(hereinafter referred to as the "Municipality")

-and-

Robert J. Swayze, Barrister & Solicitor

(hereinafter referred to as the "Independent Contractor")

Whereas:

1. Section 223 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "Act"), authorizes a Municipality to appoint an Integrity Commissioner, hereinafter referred to as Integrity Commissioner, who reports to Council, to investigate in an independent manner the functions assigned by the municipality with respect to
 - a. the application of the code of conduct for members of Council; and
 - b. the application of any procedures, rules and policies of the municipality governing the ethical behaviour of members of council and of local boards or of either of them;
2. in appointing an Integrity Commissioner and in assigning powers and duties to him/her, Municipality has had regard to, among other things:
 - a. the investigators independence and impartiality;
 - b. confidentiality with respect to the investigator's activities;
 - c. the creditability of the investigator's investigative process;

3. the Municipality is satisfied that the Independent Contractor has the skills and ability to meet the foregoing criteria;

Now therefore the parties covenant and agree as follows:

1. Services - The Municipality hereby retains and appoints the Independent Contractor as an Integrity Commissioner pursuant to Section 223 of the *Act* and the Integrity Commissioner agrees to provide such services in accordance with the Act, for and at the request of the Municipality and accepts such appointment.
2. Duties - The duties of the Integrity Commissioner shall include the following:
 - i. To provide written and oral advice to individual members of Council about their own situation under the Code of Conduct and other procedures, rules and policies governing the ethical behaviour of members, which advice shall be binding on the Independent Contractor.
 - ii. To provide Council with specific and general opinions and advice on the Town's procedures, rules and policies regulating the conduct of members and issues of compliance with such regulations.
 - iii. To conduct inquiries within the discretion of the Independent Contractor, into a request made by Town Council, a member of Council, a local board, a member of a local board or a member of the public into whether a member of Council or a member of a local board has contravened any applicable code of conduct, procedures, rules and policies governing the ethical behaviour of members.
 - iv. To determine whether a member of Council has violated any Town procedures, rules and policies governing ethical behaviour and report any violation with any recommendation for sanction to Council.
 - v. To provide an annual report to Council on issues addressed, if any, including examples in general terms of advice rendered and complaints received and disposed of, by April 30 of each year during the term of this Agreement.

- vi. To provide, as requested, outreach programs to Council and local boards on issues of ethics and integrity.
- vii. To provide, as required, recommended policies and procedures to govern the ethical behaviour of Members of Council.

In performing such duties, the Integrity Commissioner shall have the powers set out in Subsection 223.4 of the Act. The terms and conditions of *Town of Essex Request for Proposal - RFP-18-001 Integrity Commissioner Services*, as issued September 25, 2018 are incorporated by reference hereto and shall apply notwithstanding anything to the contrary.

3. Fees

- i. Hourly Rate - In any month, the Independent Contractor shall be paid a fee at the rate of \$235.00 per hour for his time spent. The Independent Contractor agrees that such fee shall be charged only for such time that the Independent Contractor is actively investigating an inquiry, preparing and presenting his/her report with respect thereto or addressing a request for advice or information from the municipality. It is understood that trips to Essex will be minimized, but in such event, time spent:
 - will include travel time at \$100 per hour and mileage at \$.52 per Km., if by car and if by air, travel time at \$100 per hour and all travel expenses.
 - If the trip is overnight, docketed time spent in Essex will stop at 4:30 pm and re-commence at 8:30 am, unless meetings attended are held in the evening. The Independent Contractor is entitled to be reimbursed other reasonable receipted expenses related to his duties.

- 4. Detailed Invoices - The Independent Contractor further covenants and agrees to provide detailed confidential dockets of his time spent and to identify each matter separately. The Independent Contractor shall invoice the Municipality quarterly or as otherwise required by the CAO.

- 5. The term of this Agreement (the "Term") is for two (2) years commencing on February 1, 2019 and ending on January 31, 2021. The parties agree that the prior extended services agreement between them shall terminate on such date. The Municipality

shall have the right to extend the Term for one further term of two (2) years on the same terms and conditions by giving the Independent Contractor at least 30 day's notice in writing before the end of the Term.

6. This agreement may be terminated by either party on thirty (30) days' notice to the other provided that if the Independent Contractor has commenced an investigation he will be allowed to complete such investigation and report to Council if required. Any such termination by the Municipality shall be accomplished by resolution of Council.
7. Taxes – All amounts payable to the Independent Contractor shall be paid without deduction. The Independent Contractor shall be responsible for any contributions imposed or required under employment insurance, health tax, social insurance, income tax laws, Worker's Compensation (if elected to enrol), pension with respect to any amounts paid to the Independent Contractor. The Municipality assumes no obligation or liability as between the parties to this Agreement to deduct or remit any statutory or government remittances.
8. Independent Contractor – The Independent Contractor is a contractor independent of the Municipality. Nothing herein shall be interpreted to create a relationship of employer/employee, partnership, franchise, agency or joint venture or other like arrangement.
9. Delegation – In the event the Independent Contractor determines it to be necessary to delegate some or all of his powers and duties, or in the event the CAO of the Municipality has requested the same, then he may or shall (as the case may be), do so in writing to any person other than a member of council, provided that the person to whom such delegation is made agrees in writing to be governed by the same duties of secrecy as the Independent Contractor and to abide by the terms and conditions of this Agreement. Such person shall always be under the supervision and direction of the Independent Contractor. Invoices shall be rendered by the Independent Contractor including the cost of such delegation without mark up and the Independent Contractor shall otherwise be responsible for the fees and disbursements of any delegates.
10. Binding - This Agreement shall enure to the benefit of and bind the parties and

their respective heirs, successors and permitted assigns.

11. Indemnification - The Municipality agrees to indemnify and save harmless the Independent Contractor, its agents and assigns, from and against any and all liabilities, losses, suits, claims, demands, damages, expenses, costs (including all legal costs), fines and actions of any kind or nature whatsoever arising out of or in connection with the Independent Contractor's provision of services and carrying out of its duties including, but not limited to, any alleged breach of this agreement, any procedural defect or other breach of relevant statutory provisions.
12. Entire Agreement - This Agreement contains the entire agreement between the parties and supersedes all previous negotiations, understandings and agreements, verbal or written with respect to any matter referred to in this agreement.

In witness hereof each of the parties hereto have set its hand and seal as of this ____ day of February, 2019.

Signed, Sealed & Delivered

The Corporation of the Town of Essex

Mayor

Clerk

The Independent Contractor hereby accepts and agrees to the terms and conditions herein contained.

Date

Witness

Robert J. Swayze, Barrister & Solicitor